

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER MICHAEL FRANGES,

Plaintiff,

No. C 08-1882 PJH (PR)

vs.

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

SANTA CLARA POLICE
DEPARTMENT and SAN JOSE
POLICE DEPARTMENT,

Defendants.

Plaintiff, a prisoner at the Santa Clara County Jail, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

Venue is proper in this district because a substantial part of the events giving rise to the action occurred in this district. See 28 U.S.C. § 1391(b).

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

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1 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of
2 the claim showing that the pleader is entitled to relief." "Specific facts are not necessary;
3 the statement need only "give the defendant fair notice of what the . . . claim is and the
4 grounds upon which it rests."" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations
5 omitted). Although in order to state a claim a complaint "does not need detailed factual
6 allegations, . . . a plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief'
7 requires more than labels and conclusions, and a formulaic recitation of the elements of a
8 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
9 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65
10 (2007) (citations omitted). A complaint must proffer "enough facts to state a claim for relief
11 that is plausible on its face." *Id.* at 1986-87.

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
13 elements: (1) that a right secured by the Constitution or laws of the United States was
14 violated, and (2) that the alleged deprivation was committed by a person acting under the
15 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

16 **B. Legal Claims**

17 Plaintiff contends that he although he had stopped fleeing from police, a police dog
18 bit him, and after he had fallen to the ground, he received "several hard blows to my head
19 from a police officer while the dog was still biting me."

20 The defendants named are the Santa Clara Police Department and San Jose Police
21 Department. In order to hold a police department liable under section 1983 plaintiff must
22 allege that the violation of his rights was pursuant to a custom or policy of the department,
23 or allege facts from which such a custom or policy can be inferred. *See Shaw v. Cal. Dep't*
24 *of Alcoholic Beverage Control*, 788 F.2d 600, 610-11 (9th Cir. 1986). He has not done this,
25 which is one reason the complaint will be dismissed with leave to amend.

26 **CONCLUSION**


27 1. For the foregoing reasons, the case is **DISMISSED** with leave to amend, as
28 indicated above, within thirty days from the date of this order. The amended complaint

1 must include the caption and civil case number used in this order and the words
2 AMENDED COMPLAINT on the first page. Because an amended complaint completely
3 replaces the original complaint, plaintiff must include in it all the claims he wishes to
4 present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not
5 incorporate material from the original complaint by reference. Failure to amend within the
6 designated time will result in the dismissal of these claims.

7 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
8 court informed of any change of address by filing a separate paper with the clerk headed
9 "Notice of Change of Address," and must comply with the court's orders in a timely fashion.
10 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
11 Federal Rule of Civil Procedure 41(b).

12 **IT IS SO ORDERED.**

13 Dated: April 21, 2008.



PHYLLIS J. HAMILTON
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER M. FANGES,
Plaintiff,

Case Number: CV08-01882 PJH

CERTIFICATE OF SERVICE

v.


SANTA CLARA POLICE et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 21, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Christopher M Franges PFN DVP 121
Department of Corrections
Booking No. 08005312
701 South Abel Street
Milpitas, CA 95035

Dated: April 21, 2008


Richard W. Wieking, Clerk
By: Monica Narcisse, Deputy Clerk